THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT APPEAL Nos.1334, 1364, 1435 and 1967 of 2004

(Date: 21-04-2006)

WRIT APPEAL NO. 1334 OF 2004:

Between:

P. Gopal Reddy, S/o Venkat Reddy,

Aged about 59 years, Occ: Retired Manager,

r/o Nellore and two others.

….Appellants/Writ Petitioners.

And

A.P. State Agro Industries Development

Corporation Ltd., rep. by its Vice Chairman

& Managing Director,

AC Guards, Hyderabad.

... Respondent/Respondent.

And three appeals.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT APPEAL Nos.1334, 1364, 1435 and 1967 of 2004

COMMON JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

All these appeals are at the instance of the un-successful writ petitioners who seek to assail the common order passed by the learned single Judge dismissing the writ petitions wherein they sought for Certiorari by quashing the impugned proceedings dated 17.04.1992 issued by the respondent-Corporation herein.

Heard Sri A.K. Jayaprakash Rao, the learned counsel appearing for the appellants/writ petitioners and Sri M.V.Suresh Kumar, the learned Standing Counsel appearing for the respondent-Corporation.

Briefly stated the undisputed facts are that the appellants/writ petitioners are the employees working with the respondent-Corporation as Regional Managers at the relevant point of time and they seek to assail the impugned proceedings dated 17.04.1992 which is only a show-cause notice given individually as to why major punishment of dismissal from service shall not be awarded and further to show-cause as to why appropriate action shall not be taken to recover the amounts for the financial loss caused to the Corporation. The grievance of the appellants/writ petitioners squarely rests on the footing that in respect of the very same allegations, the appellants/writ petitioners were earlier suspended and the same were

challenged by way of writ proceedings in this Court. Though initially the appellants/writ petitions were dismissed by the learned single Judge, subsequently, on further appeal, the Division Bench as per the orders in Writ Appeal No.509 of 1988 and batch, allowed the same and quashed the suspension orders. Accordingly, the appellants/writ petitioners were reinstated into service on 09.04.1990. In the meanwhile, a common charge memo was issued on 15.10.1987. Subsequently, an Enquiry Officer was appointed. In response to the call by the Enquiry Officer, the appellants/writ petitioners filed their respective explanations and with a request to supply certain documents. The main contention urged on behalf of the appellants/writ petitioners is that all the documents were not supplied. Even though a date of enquiry was fixed and no witnesses were examined and nor a due enquiry was conducted. Yet, the impugned show-cause notice was issued for imposing such serious punishment. Further, it is their case that having regard to the decision taken by the Government in G.O.Ms. No.282, dated 08.07.1997 for the closure of the very Corporation itself and opting for Voluntary Retirement Scheme for all the employees, the question of continuing any proceeding or even to take any action at this juncture is not justified either in law or on facts. Since the appellants/writ petitioners were already retired under the said Scheme and relieved on 31.10.1997, the entire impugned action or proposing to impose punishment, without giving the benefits under the aforesaid Scheme is totally vitiated. Hence, the Writ Petitions.

Contesting the claim of the appellants/writ petitioners, the respondent-Corporation by way of a counter-affidavit pointed out that the petitioners caused substantial loss

to the Corporation due to a fraud played by them by selling at old prices by ante-dating the actual sales. In fact, having regard to seriousness of the allegations, Anti Corruption Bureau conducted enquiry and submitted report against them. Thereupon, an enquiry was initiated and since all these aspects could be sufficiently proved from the documentary material itself in the enquiry proceedings, it was not necessary to examine any of the witnesses and the case can be considered on the basis of the documentary evidence available. Accordingly, the Enquiry Officer submitted a report holding them responsible and whereupon a decision was taken for the proposed punishment. Thereafter, the impugned show-cause notice was issued. It was pointed out that as per the Government direction, a Wing of the Corporation is sought to be closed and therefore, the said Scheme was provided with. The petitioners opted for the said Scheme, however, the same was accepted and they were relieved with condition, subject to the result of final decision in the disciplinary enquiry. Therefore, the petitioners cannot make any grievance as the impugned action is taken by the respondent-Corporation. Even otherwise, it was submitted that the impugned action is only a show-cause notice to which the appellants/writ petitioners can as well file their explanations which would be considered on merits. Therefore, the Writ Petitions are not maintainable.

Considering these and other allegations as contained from the respective pleadings and the submissions made from both the sides, the learned single Judge found that the scope of judicial review is limited to the deficiency in decision making process but not the decision itself. Further the learned Judge observed that simply because no witnesses were examined, it would not affect the decision, and the show cause

notice issued thereafter cannot be quashed. It is on record that in response to the writ petitioners' request, certain documents were furnished and nothing has been shown how prejudice is caused in not furnishing the remained documents. Therefore, it is not the case of total denial of furnishing all the documents and after referring various decisions cited across the Bar and the principles as laid down in **Manindra Nath Ghosh v. State of West Bengal, S. Krishna Murthy. Government of A.P., Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, Hardwari Lal v. State of U.P., C. Ramalinga Reddy v. Non-Conventional Energy Development Corp. of A.P., Limited,**

P. Narayana Rao v. A.P. State Meat and Poultry Development Corpn. Limited, R.G. Bakhle v. M.S.F. Corporation, S.Swamynatha Reddy v. Hindustan Shipyard Limited, General Manager, Adilabad Dist. Coop. Central Bank Limited v.

K. Ranga Rao and K. Vinodhar v. Executive Board of NIMS Appellate Authority it was ultimately found that the decision to accept the voluntary retirement under the Scheme is only subject to the result of the disciplinary proceedings and the writ petitioners have failed to show any particular or specific rule to the effect that after acceptance of VRS or even on retirement by attaining the age of superannuation, the authorities are not empowered to continue the enquiry. Therefore, in the absence of any such specific rule, the petitioners cannot wriggle out of disciplinary action. In regard to the various other objections raised on merits, it was held that these can as well be taken by way of an explanation which can be considered before any final decision or order is passed. Hence, by disposing of the Writ Petitions, a direction was given to the respondent-Corporation to give further reasonable opportunity for

filing explanations and the disciplinary authority shall have to consider the explanations filed by the writ petitioners in accordance with law and pass appropriate orders. In regard to the VRS benefits, the same can be considered after final orders are passed.

In view of the aforesaid findings as arrived at and the chequered events as pointed out from both the sides, there is no dispute to the fact that the allegations or the charges as made against the petitioners *prima facie* are quite serious. Though, these are all matters consequently considered by the disciplinary authority, the fact remains that an enquiry was conducted and it was intercepted by the introduction of the VRS, since the Corporation is sought to be closed as per the directions of the Government. As rightly pointed out by the learned single Judge, the learned counsel appearing for the appellants did not point out any specific barring rule or provision that no such proceeding can be continued by the respondent-Corporation after retirement or acceptance of VRS. Therefore, as rightly held by the learned single Judge, there cannot be any such vanishing result in regard to disciplinary action unless and until the statute prescribes there for. Further, the fact remains that the impugned action is only a show cause notice and on the face of it, it cannot be said that there is any final decision much less a conclusion. Necessarily, the show-cause notice itself contemplates for enabling the writ petitioners to file explanation and raise all objections or pleas and the same would be considered before passing any final orders. Therefore, the show-cause notice itself is not a conclusive one amounting to any final decision or dismissal or by way of any punishment. Apparently, the petitioners have un-necessarily rushed to this Court without filing

any explanation to the said show-cause notice and awaiting the orders, if any, that would be passed. As rightly pointed out, the judicial review cannot be test a final decision and only can look into the process. Here is a case where there is no error or irregularity nor there is any lapse in the process as such. Even other-wise, this Court cannot go into the merits of the case at the instance of the writ petitioners or that of the respondent to have any say on merits especially in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Petitions are quite pre-mature. Therefore, we do not find any merits in any of the submissions made on behalf of the appellants and with a liberty to the appellants herein to submit their explanations within a period of 4 (four) weeks from today and on receipt of which the same shall be considered from a proper perspective and the respondent shall pass appropriate orders in accordance with law.

The appeals are accordingly dismissed. No costs.

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B. PRAKASH RAO, J

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Dr. G.YETHIRAJULU, J

21st April 2006.

Chvn.